S.B.Civil Second Appeal No.176/2005

Smt. Vimla Choudhary. vs. Shubhkaran Tater

Date : 24.8.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Sanjay Kapoor, for the appellant.

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Heard learned counsel for the appellant.

The plaintiff/appellant filed suit for eviction of his tenant on the ground that her son is in need of the shop in dispute as her son is doing the work of computer repairing and is learning software programmes. The trial court decreed the suit vide judgment and decree dated 27.11.2003. The first appellate court reversed the judgment and decree of the trial court vide judgment and decree dated 7.10.2004. Hence, this second appeal.

According to learned counsel for the appellant, the appellant's son could not appear in the witness box because he was engaged in contract basis. However, the plaintiff's husband appeared and gave statement to prove the need of his son. It is also submitted that the first appellate court committed serious error in holding that the plaintiff suppressed important material facts from the Court. It is submitted that the house which was taken into consideration by the first appellate court is situated in residential locality whereas shop in question is situated in the market. Therefore, the first appellate court should not

have allowed the appeal of the tenant after taking into consideration the other house of the plaintiff.

I have considered the submissions of the learned counsel for the appellant and perused the reasons given in the judgments of the two courts below.

It is clear that the first appellate court took note of the important material facts from the admission of the plaintiff's husband who in cross examination, very categorically admitted that in his own house, Navodaya Pharma Distributors is running their office and there are shops in front of his house and other shops are also situated nearby. The first appellate court also took note of the exact location of the house which according to the plaintiff is residential and for which he admitted that part of the premises has been let out for commercial purpose. The first appellate court also considered other evidence including the evidence of the defendant and thereafter recorded a finding of fact. Such a finding of fact cannot be reconsidered in second appeal.

In view of the above, I do not find any merit in this appeal. No substantial question is involved in this appeal.

Accordingly, this second appeal is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya